

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	
FM Broadcast Stations.)	
(Cross City, Florida)	)	MB Docket No. 04-195
	)	RM-10975
)	
(Key Largo, Florida)	)	MB Docket No. <u>04-196</u>
	)	RM-10970
)	
(McCall, Idaho)	)	MB Docket No. 04-197
	)	RM-10971
)	
(McCall, Idaho)	)	MB Docket No. 04-198
	)	RM-10977
)	
(McCall, Idaho)	)	MB Docket No. 04-199
	)	RM-10978
)	
(McCall, Idaho)	)	MB Docket No. 04-200
	)	RM-10979
)	
(Shorter, Alabama)	)	MB Docket No. 04-201
	)	RM-10972
)	

NOTICE OF PROPOSED RULEMAKING

Adopted: May 26, 2004

Released: May 28, 2004

Comment Date: July 19, 2004

Reply Comment Date: August 3, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth seven separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Information Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the

processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-195; RM-10975

Petitioner: Paul B. Christensen, Esq.
Law Offices of Paul B. Christensen, P.A.
3749 Southern Hills Drive
Jacksonville, Florida 32225

Proposal: Allot Channel 249C3 at Cross City, Florida, as that community's second FM commercial aural transmission service.¹

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cross City, Florida	295C1	249C3, 295C1

Coordinates: 29-44-07 NL and 83-08-42 WL

Additional Information: The allotment requires a site restriction of 11.2 kilometers (6.9 miles) north to avoid a short-spacing to the license sites of Station WSKY-FM, Channel 247C2, Micanopy, Florida and FM Station WXTB, Channel 250C, Clearwater, Florida.

FCC Contact: Rolanda F. Smith (202) 418-2180

B. MB Docket No. 04-196; RM-10970

Petitioner: Paul B. Christensen, Esq.
Law Offices of Paul B. Christensen, P.A.
3749 Southern Hills Drive
Jacksonville, Florida 32225

Proposal: Allot Channel 237C3 at Key Largo, Florida as that community's second FM commercial aural transmission service.²

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Key Largo, Florida	292C2	237C3, 292C2

Coordinates: 25-05-24 NL and 80-26-36 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction.

FCC Contact: Rolanda F. Smith (202) 418-2180

¹ AM Station WYNY and noncommercial FM Station WWLC are currently assigned to Cross City.

² Noncommercial FM Stations WGES and WMKL are currently assigned to Key Largo.

C. MB Docket No. 04-197; RM-10971

Petitioner: Robert Lewis Thompson, Esq.
c/o McCall Broadcasting Company
Thiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, VA 22314

Proposal: Allot Channel 228C3 McCall, Idaho as that community's third FM commercial aural transmission service.³

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
McCall, Idaho	252C1, 266C1	228C3, 252C1, 266C1

Coordinates: 44-54-30 NL and 116-06-00 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction.

FCC Contact: Rolanda F. Smith (202) 418-2180

D. MB Docket No. 04-198; RM-10977

Petitioner: Robert Lewis Thompson, Esq.
c/o Brundage Broadcasting Company
Thiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, VA 22314

Proposal: Allot Channel 238C3 McCall, Idaho as that community's third FM commercial aural transmission service.⁴

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
McCall, Idaho	252C1, 266C1	238C3, 252C1, 266C1

Coordinates: 44-54-30 NL and 116-06-00 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction.

FCC Contact: Rolanda F. Smith (202) 418-2180

³ Station KMCL-FM and noncommercial FM Stations KBSM and KSSQ, and KBSK are assigned to McCall.

⁴ Station KMCL-FM and noncommercial FM Stations KBSM and KSSQ, and KBSK are assigned to McCall.

E. MB Docket No. 04-199; RM-10978

Petitioner: Robert Lewis Thompson, Esq.
c/o Long Valley Broadcasting Company
Thiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, VA 22314

Proposal: Allot Channel 275C3 McCall, Idaho as that community's third FM commercial aural transmission service.⁵

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
McCall, Idaho	252C1, 266C1	252C1, 275C3, 266C1

Coordinates: 44-54-30 NL and 116-06-00 WL

Additional Information: This allotment is at city reference coordinates and requires no site restriction.

FCC Contact: Rolanda F. Smith (202) 418-2180

F. MB Docket No. 04-200; RM-10979

Petitioner: Robert Lewis Thompson, Esq.
c/o King's Pines Broadcasting Company
Thiemann Aitken & Vohra, LLC
908 King Street, Suite 300
Alexandria, VA 22314

Proposal: Allot Channel 293C3 McCall, Idaho as that community's third FM commercial aural transmission service.⁶

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
McCall, Idaho	252C1, 266C1	252C1, 266C1, 293C3

Coordinates: 44-57-54 NL and 116-03-00 WL

Additional Information: This allotment requires a site restriction of 7.4 kilometers (4.6 miles) northeast of McCall.

FCC Contact: Rolanda F. Smith (202) 418-2180

⁵ Station KMCL-FM and noncommercial FM Stations KBSM and KSSQ, and KBSK are assigned to McCall.

⁶ Station KMCL-FM and noncommercial FM Stations KBSM and KSSQ, and KBSK are assigned to McCall.

G. MB Docket No. 04-201; RM-10972

Petitioner: Matthew K. Wesolowski, General Manager
SSR Communications Incorporated
5270 West Jones Bridge Road
Norcross, GA 30092-1628

Proposal: Allot Channel 300A at Shorter, Alabama, as that community's first local aural transmission service.⁷

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Shorter, Alabama	-----	300A

Coordinates: 32-16-36 NL and 85-56-20 WL

Additional Information: This allotment requires a site restriction of 13.3 kilometers (8.3 miles) south of Shorter.

In compliance with § 1.52 of the Commission's rules, SSR Communications Incorporated is requested to include with its comments verification that the statements contained in the petition are accurate to the best of its knowledge.⁸

FCC Contact: Rolanda F. Smith (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 19, 2004, and reply comments on or before August 3, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington,

⁷ Shorter is an incorporated community with a 2000 U.S. Census population of 355 persons. Shorter has its own mayor, city council members, city and court clerk, police department, fire department, post office and zip code (36075). Additionally, Shorter is a local commercial center, with several new industries opening within the next few years.

⁸ Although the SSR Communications Incorporated's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules require that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919, n.41 (1990). SSR Communications Incorporated is requested to rectify this omission in its comments.

D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as listed above for each docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁹

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁹ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.